Re Application by ONG LEONG SENG & ANOR.

[C. A. (Knight Ag. C.J. (S), Thomson C.J. (F.M.) and Chua J.) November 4, 1957]

[Singapore — Civil Appeal No. 4 of 1957]

Land Acquisition — Mandamus against Collector of Land Revenue — Whether letters written by landowners to Collector amounted to "written applications" — Whether Collector had power to waive objection out of time — Land Acquisition Ordinance (Cap.248), ss.10, 19 and 37.

In this case the Collector of Land Revenue acquired certain lands in 1949 for defence purposes and in January 1951 he made an award of compensation in respect thereof. The landowners each wrote a letter to the Collector to the effect that the compensation so made was inadequate and that the Collector might thereby reconsider the award. Not receiving replies to their letters, the landowners in April 1951 instructed their solicitors to write formal applications to the Collector for a reference to the Court, but by reason of section 19(3)(b) these applications were out of time.

After discussions and subsequent correspondence had taken place, the Collector was at first of the opinion that the letters written by the landowners might be considered as written applications to refer the matter to the Court but very much later in November 1955 he changed his mind stating that as no request for reference was received in due time in accordance with section 19(3)(b) the matter could not be referred for determination of the Court.

The landowners then commenced proceedings in January 1956 by applying for leave for an Order of *Mandamus* requiring the Collector to refer the matter to Court. Leave was granted but the application for *Mandamus* was dismissed and against that decision the landowners appealed. On appeal it was contended on their behalf that the letters amounted to written applications to the Collector requiring a reference to the Court and a further point, which was not taken in the Court below, that in the alternative even if the letters did not constitute such applications the landowners' solicitors had made such applications in April 1951 and although these applications were admittedly out of time the Collector had in effect by his subsequent conduct waived the objection of out of time and agreed to an extension of time.

Held: (1) the letters requesting a reconsideration of the award made did not fall within the words of section 19 of the Land Acquisition Ordinance as they did not "require that the matter be referred by the Collector for determination of the Court" and therefore the landowners failed to comply with the conditions laid down therein;

(2) the Collector had no power to waive the objection of out of time for the requirements as to time contained in section 19(3)(b) are not procedural requirements but are fundamental conditions which must be fulfilled to create jurisdiction in the Court.

Cases referred to:—

(1) *Chia Yew Siang v. Collector of Land Revenue* (1930) S.S.L.R. 149.

(2) *Ezra v. Secretary of State for India* I.L.R. 32 Cal. 605, 629.

(3) *Sri Rajah Bammadevara Venkata Narasimha Naidu Bahadur v. Subbarayudu* I.L.R. 36 Mad. 395, 397.

(4) *Sukhbir Singh & Ors. v. Secretary of State for India* A.I.R. 1926 All. 766.

(5) *Burge v. Improvement Trust, Lucknow* A.I.R. 1924 Oudh 127.

(6) *Secretary of State v. Hakim* A.I.R. 1914 Lah. 85.

(7) *In re Government v. Nanu Kothare & Ors.* I.L.R. 30 Bom. 275.

(8) *Nusserwanjee Pestonjee v. Meer Mynoodeen Khan W.M. Bahadoor* 6 Moo. I.A. 134, 155.

COURT OF APPEAL.

J. E. Lloyd for the appellants.

C. H. Smith for the respondent.

Cur. Adv. Vult.

Thomson C.J. (F.M.) (with whom Knight Ag. C.J. and Chua J. agreed): — This is an appeal from an order by Taylor, J., dismissing an application for an Order of Mandamus against the Collector of Land Revenue of the Colony of Singapore in connection with certain proceedings under the Land Acquisition Ordinance (now Chapter 248).

The facts of the case, though amazing, are not in dispute.

In 1949 the appellants (to whom I shall refer as the Landowners) were the owners of Lot 159, Mukim XVIII of Singapore, and in 1949 the Collector of Land Revenue took steps to acquire this land for defence purposes under the provisions of the Land Acquisition Ordinance.

On 10th January, 1951, the Collector made an award of compensation amounting to $48,729.37 in respect of the land under section

10 of the Ordinance and this award was served on the Landowners on 26th January, 1951.

On 1st February, 1951, each of the landowners wrote a letter to the Collector in identical terms. The material portions of these letters read as follows:—

"I have the honour to write to you with regard to the acquisition of the above property . . . . . and to compensation made for same.

I regret to state that the compensation . . . . . is barely adequate . . . . . .

Under the circumstances we trust that you will thereby reconsider the award made in respect of the half share in the above property."

Although these letters were in fact received by the Collector he had not the common courtesy to acknowledge, far less to reply to them. Had he done so, the Courts would have been spared the trouble and the landowners the very considerable expense of the present litigation.

Not receiving replies to their letters, the landowners instructed solicitors and on 14th April, 1951, their solicitors addressed to the Collector formal applications in writing for a reference to the Court of the amount of compensation under section 19 of the Ordinance.

By reason of section 19(3)(b) these applications should have been made within six weeks of the date of service of the award which was 26th January, 1951, and they were therefore well out of time on 14th April. In their covering letter, however, the landowners' solicitors said:—

"We are instructed that informal notices requesting the reference, have been filed."

This was clearly a reference to the landowners' letters of 1st February. In the reply to the solicitors' letter, dated 19th April, 1951, which came not from the Collector but from the Commissioner of Lands, no reference was made to these letters written by the landowners themselves, but on the other hand nothing was said about the applications sent by their solicitors being out of time. Shortly afterwards, the amount of compensation awarded by the Collector was paid to the landowners and accepted by them under protest and without prejudice to any award that the Court might make. But nothing further was done until December, 1952.

It would appear that this delay was due to pending litigation in another case (Land Acquisition No. 1/52) in which it was held on 27th November, 1952, that an award was void because the land acquired was not marked out and measured in accordance with section 7. It was apparently thought that this might have some application to the case of the landowners. Be that as it may, on 9th December, 1952, the Commissioner of Lands addressed a letter to their solicitors to the effect that he was advised that, although in their case section 7 of the Ordinance might not have been strictly complied with, the matter might nevertheless come before the High Court under the provisions of section 19 "if you formally waive your right to require that the Collector shall, before taking any action under sections 8, 9 and 10 of the Ordinance comply in all respects with the provisions of section 7 which requires the Collector to mark out and to measure the land to be acquired." In that connection he pointed out that the land in question had already been surveyed under the provisions of the Boundaries and Survey Maps Ordinance (Chapter 130). Before the solicitors had replied to that letter the Commissioner of Lands addressed a further letter to them on 5th February, 1953, which reads as follows:—

"I have the honour to inform you that it is now noted from my records that your clients did not apply for the above matter to be referred for the determination of the Court within the time limit stipulated under Section 18* of the Land Acquisition Ordinance. The award was served on your client on 28th January, 1951, and on 1st February, 1951, your client wrote asking for the matter to be reconsidered but no application was made for the matter to be referred for the determination of the Court. I, therefore, cannot accept your application dated 16th April, 1951."

Discussions then took place between the Commissioner and the solicitors and on 4th March the Commissioner addressed a further letter to them stating that he had "personally" examined the file and was of the opinion that the landowners' letters of 1st February, 1951, might be considered as applications to refer the matter to the Court and that in any event he considered that in view of the terms of the subsequent correspondence "the appeal should go forward." He asked, therefore, that his letter of 5th

* Now section 19.

February, 1953, should be treated as cancelled and gave his assurance "that the reference will be made as promised as soon as survey is complete."

In spite of this assurance nothing was done, and on 3rd November, 1953, that is eight months later, the landowners' solicitors addressed a letter to the Commissioner inquiring when the reference would be heard by the Court. They received a reply dated 27th November, 1953, to the effect that the references would be filed in two weeks time.

Two weeks elapsed and nothing was done. When these two weeks had become extended to fifteen months the solicitors wrote a letter to the Collector of Land Revenue on 24th February, 1955, inquiring as to the position. No reply was received to that letter. The solicitors wrote four further letters, to none of which the Commissioner saw fit to reply, and ultimately they adopted the attitude they would have adopted to a defaulting debtor and wrote a letter on 3rd September, 1955, stating that unless they received a satisfactory reply within a week they would commence mandamus proceedings to set aside the award and require a new award to be made, upon which a reference to Court would be made immediately.

Apparently the threat succeeded where other methods had failed. At least it elicited a reply which was dated 9th September, 1955, and was to the effect that "notwithstanding that the appeals were out of time consideration is being given to the settlement of these cases by negotiation."

There was some further correspondence and ultimately on 30th November, 1955, the Commissioner said his last word which was to the following effect:—

"I am advised that I cannot refer the matter for the determination of the Court as no request for reference was received in due time in accordance with section 18* of the Land Acquisition Ordinance. In these cases, the awards were served on your clients on the 26th and the 27th January 1951. Your request for the matter to be referred to the Court was not received until 16th April 1951.

The period of six weeks prescribed by the section is not capable of enlargement and the letter written by the Commissioner of Lands dated 4th March 1953 must therefore be regarded as having no legal effect."

* Now Section 19.

On 5th January, 1956, the landowners commenced the present proceedings by applying for leave to apply for an order of mandamus requiring the Collector to refer the matter to the Court. Leave was granted, but the application for mandamus was ultimately dismissed by Taylor, J., on 26th March, 1956. Against that decision the landowners have brought the present appeal.

At the trial the case for the landowners was that the letters of 1st February, 1951, amounted to a written application to the Collector requiring the matter of compensation to be referred to the Court for determination, and these letters were within the period of six weeks prescribed by section 19(3)(b). Alternatively, it was argued that the Collector by reason of his conduct was estopped from contending that the application was out of time. On both these points Taylor, J., decided against them.

We are not here concerned with the question of estoppel, for that argument has been abandoned. Before us, however, it has been contended that Taylor, J., was wrong in holding that the letters of 1st February, 1951, did not amount to written applications to the Collector requiring a reference to the Court and the further point was taken, which it is admitted was not taken before Taylor, J., that in the alternative even if these letters did not constitute such applications then the landowners' solicitors had made such applications on 14th April, 1951, and although these applications of 14th April, 1951, were admittedly out of time the Collector had in effect by his subsequent conduct waived the objection of out of time and agreed to an extension of time.

The material provisions of the Land Acquisition Ordinance, which follows very closely the Indian Land Acquisition Act (Act No. 1 of 1894), are contained in sections 10, 19 and 37 (sections 11, 18 and 53 of the Indian Act).

When land has been acquired under the Ordinance, section 10 requires the Collector to hold an inquiry and make an award of compensation. By section 19 any person interested who has not accepted the award "may, by written application to the Collector, require that

the matter be referred by the Collector for the determination of the Court." Sub-section (2) requires that "the applicant shall state specifically the grounds on which objection to the award is taken." Sub-section (3) provides, *inter alia*, that every such application shall be made within six weeks of receipt of notice of the award. And sub-section (4), which does not appear in the corresponding section of the Indian Act, but which was added here in 1933 presumably in consequence of the decision of the Court in *Chia Yew Siang v. Collector of Land Revenue, Singapore*,[1] which I shall discuss at a later stage, reads as follows:—

> "The period of six weeks prescribed by paragraph (a) of subsection (3) and the periods of six weeks and twelve months prescribed by paragraph (b) of subsection (3) shall not be capable of enlargement by any court."

By section 37, the Rules of the Supreme Court are to apply to proceedings before the Court under the Ordinance save in so far as they may be inconsistent with anything in the Ordinance itself.

The position under the Indian Act has thus been described by the Privy Council in the case of *Ezra v. Secretary of State for India*[2]:—

> "When the sections relating to this matter are read together, it will be found that the proceedings resulting in this 'award' are administrative and not judicial; that the 'award' in which the enquiry results is merely a decision (binding only on the Collector) as to what sum shall be tendered to the owner of the lands; and that, if a judicial ascertainment of value is desired by the owner, he can obtain it by requiring the matter to be referred by the Collector to the Court."

From this it follows that, as it was put by White, C.J., in the case of *Sri Rajah Bammadevara Venkata Narasimha Naidu Bahadur v. Subbarayudu*,[3] "proceedings under Part III of the Act are not by way of appeal and what is contemplated is a new inquiry by the District Judge."

Having made these preliminary observations I shall deal in the first place with the question of whether the letters written by the landowners on 1st February, 1951, amounted to a written application to the Collector requiring the matter of their compensation to be referred to the Court for determination.

From what has been said it is clear that proceedings before the Court can only be initiated by a landowner taking steps under section 19, and the steps which he must take are clearly described by the section. He must make a written application to the Collector and that application must "require that the matter be referred by the Collector for determination of the Court." To my mind, the letters in question here, the terms of which have been quoted, do not fall within the words of the section. They do not require the Collector to refer the matter to the Court. They trust that he himself will reconsider his award. The two things are entirely different. It is beside the point to say that the landowners were acting without legal advice. The law gave them a certain remedy and, whatever the reason was, they did not ask of it. They asked for something entirely different. If what they wanted was the remedy of having their compensation assessed by the Court they failed to ask for it and if they failed to ask for it they failed to comply with one of the conditions which had to be fulfilled before they could have it.

I am fortified in this view by a consideration of certain Indian cases.

In the case of *Sukhbir Singh & others v. Secretary of State for India*[4] certain landowners whose lands had been acquired had asked that the matter of the award be referred to the District Judge. The application, however, though it mentioned that the amount of compensation awarded by the Collector was low did not ask that it be determined by the District Judge. It merely asked that the question of compensation should be postponed until a final decision as to the "propriety or legality of Government in acquiring the land" had been settled by a competent Court. This was held not to be a written application requiring a reference to the Court under section 18 of the Indian Act.

In the case of *Burge v. Improvement Trust, Lucknow*[5] the landowner sent a letter stating that the compensation awarded was inadequate and that, unless the property was released from the "harsh" operations of the Act or proper compensation awarded, he would be obliged to institute a suit for a declaration in the Civil Court to have the acquisition declared null and

void. This again was held not to be an application for a reference to the Court under section 18.

Secretary of State v. Hakim[6] was a case where, as in the present case, the landowners had merely prayed the Collector to revise his award and grant them further compensation and it was held that that did not amount to an application for a reference.

Finally, I take the case of *In re Government v. Nanu Kothare & others.*[7] That case also was similar to the present one except that the facts were much more strongly in favour of the landowner. Within the prescribed period of six weeks the landowner's solicitors addressed a letter to the Collector stating that his award was not accepted and that "we will send you in due time a formal request to refer the matter for the determination of the High Court of Judicature at Bombay under section 18 of the Land Acquisition Act, 1894." About a month later, but after the period of six weeks had expired, the solicitors addressed a formal request for reference to the Collector. It was held that the earlier letter did not amount to compliance with the provisions of the Act. "The test is this: What was the Collector to understand when he received this letter? Was he to understand, when he received it, that he was bound to act upon it and refer or rather that he should not act upon this letter but wait until another letter, written formally, i.e., with due regard to the requirements of section 18, reaches him? The latter is, in my opinion, the plain meaning." (Per Chandavarkar, J., at page 287). Applying the same test to the present case, what was the Collector to understand when he received the landowners' letters? Was he to understand that he was required to refer the matter to the Court or was he to understand that he himself was being asked to reconsider his award?

Before departing from the Indian cases it is of interest to observe that they all proceed on the basis that compliance with the conditions of section 18 of the Indian Act is a condition which must be fulfilled if the Court is to have any jurisdiction. The point is dealt with in *Nanu Kothare's case, supra,* by quoting the following classic passage from the judgment of the Privy Council in the case of *Nusserwanjee Pestonjee v. Meer Mynoodeen Khan W.M. Bahadoor*[8]:—

> "Wherever jurisdiction is given to a Court by an Act of Parliament, or by a Regulation in India (which has the same effect as an Act of Parliament), and such jurisdiction is only given upon certain specified terms contained in the Regulation itself, it is a universal principle that these terms must be complied with, in order to create and raise the jurisdiction, for if they be not complied with the jurisdiction does not arise."

I turn now to the argument that the Collector by his conduct had in effect waived the objection of out of time and agreed to an extension of time.

On the correspondence it is, of course, abundantly clear that at more than one stage of the negotiations between the parties the Collector was quite willing that the reference should be made to the Court although the provisions of section 19(3) relating to time had not been complied with. That, however, does not amount to saying that there was such an effective waiver as to enable the landowners to avail themselves of it.

If it were necessary I would be prepared to say that the requirements as to time contained in section 19(3) are not procedural requirements but are fundamental conditions which must be fulfilled to create jurisdiction in the Court. It is not, however, to my mind, necessary to go so far, for the truth of the matter is that the Collector had no power to waive the objection. On that point I have nothing to add to what is said in the following passage from the judgment of Chandavarkar, J., in *Nanu Kothare's* case, *supra,* (at page 289):—

> "There was one point, which in the course of argument at the Bar, suggested itself to me and I thought then that it might be of some weight in support of the validity of the reference. That point was that the Collector, whose position under the Land Acquisition Act, as held by the Privy Council in Ezra's case, already referred to, is that of an agent of Government, having made the reference, must be regarded as having waived his right or the right of his principals, the Government, to dispute that the reference was unauthorised and therefore illegal. But I have more carefully weighed the point since and arrived at the conclusion that there is nothing in it. The Collector's authority to make the reference as an agent of Government is restricted by the statutory conditions prescribed in section 18. The claimants cannot plead ignorance of those conditions and the restricted nature of the Collector's authority. He cannot

bind Government by stepping outside the limits of the power given by section 18. If he does step outside them, his action is illegal: and no waiver on his part can atone for the failure of the claimant to fulfil the statutory conditions which the law required them to fulfil before their right to require the Collector to make a reference could come into existence."

I think that passage disposes of the point, but before departing from the case I think I should say a few words about the argument of counsel for the landowners based on the local case of *Chia Yew Siang v. The Collector of Land Revenue, Singapore, supra.* That case was decided before the Ordinance was amended by the addition to section 19 (it was then section 18) of the fourth sub-section, the terms of which have already been quoted. In it Stevens, J., held that the Court had power to enlarge the time for making an application under section 18(3) of the Ordinance by virtue of section 37 of the Ordinance itself and section 1333 of the Civil Procedure Code (now Order LXI rule 2). Section 37 provides that save in so far as they may be inconsistent with anything contained in the Ordinance the provisions of the Rules of the Supreme Court shall apply to all proceedings before the Court under the Ordinance and Order LXI rule 2 provides that the Court may enlarge the time appointed by the Rules "for doing any act or taking any proceedings." It was held that this rule was not inconsistent with the provisions of the Land Acquisition Ordinance and that this would have to be read with section 37 of the Ordinance so as to give the Court power to enlarge the time appointed by section 18(3) [now 19(3)]. By reason of the amendment of the Ordinance, which has been mentioned, this case is no longer of practical importance. Counsel for the landowners, however, in the present case has argued that it is authority for the proposition that rule 3 of Order LXI in effect enables the Collector to do what he would otherwise be unable to do, that is to agree to an enlargement of the time prescribed by section 19(3).

Though attractive at first sight, to my mind this argument must fail. In this connection I do not think it necessary to discuss the question of whether *Chia Yew Siang's* case, *supra,* was correctly decided. To my mind it is sufficient to point out that there is a very great difference between rule 2 and rule 3 of Order LXI. By rule 2 the Court "may enlarge.....the time appointed .....for doing any act or taking any proceeding." By rule 3 "the time for delivering, amending, or filing any pleading, answer, or other document may be enlarged by consent in writing." Whatever be the scope of rule 2, the scope of rule 3 is clearly confined to matters that can only come into existence after proceedings have been commenced. And in the present case, what we are concerned with is the actual commencement of proceedings.

Though I have much sympathy with the landowners and think that they have been very badly treated by Government nevertheless in my judgment the law is clearly against them and I would, therefore, dismiss the appeal with costs.

Appeal dismissed.

Solicitors: *Drew & Napier; Donaldson & Burkinshaw.*

ONG AH SIONG v. LEE GUAY ENG

[C. A. (Knight Ag. C.J., Tan Ah Tah and Rigby JJ.) November 8, 1957]

[Singapore — Civil Appeal No. 32 of 1956]

Land Acquisition — Persons entitled to receive compensation — Title by adverse possession — Whether proceedings a nullity as requirements under s.21 of the Land Acquisition Ordinance (Cap.248) — Proviso 3 to s.40(2).

The Collector of Land Revenue after conducting an inquiry as to the *quantum* of compensation payable to persons entitled to receive it awarded a sum of $104,359.20 to the respondent in preference to the appellant which decision was upheld by the trial Judge. In this appeal the appellant contended that the proceedings in the Court below were a nullity as section 21 of the Ordinance was not complied with in that the "persons interested" was not properly served with notices of such proceedings.

Held: as no objection was made at the time of trial the appellant is estopped from so doing on appeal.

Held further: the appellant's interests were in no way prejudiced by the fact that no attempt was made to serve notices on other "persons interested" as these persons could proceed against the respondent under proviso 3 to section 40(2).